

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 23-mc-80743-DMM-Matthewman

IN RE APPLICATION OF
ORTHOGEN INTERNATIONAL GmbH,

Petitioner,

For an order pursuant to 28 U.S.C. § 1782
to conduct discovery for use in a foreign
proceedings.

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JOINT NOTICE OF CONFERRAL

The parties to the referenced matter, Petitioner, Orthogen International GmbH ("Orthogen"), and Deponents, Edward Capla and Yolanda Capla ("Caplas"), respectfully submit this Joint Notice in advance of the hearing scheduled for 2:30 pm on August 29, 2023 on the Caplas' Objections to Subpoenas Duces Tecum, Motion to Quash or Modify Subpoenas or in the Alternative Motion to Stay Enforcement of Subpoenas [D.E. 20].

On August 10, 2023, the parties met and conferred by telephone and subsequently had follow-up discussions by email in a good faith effort to resolve or limit the issues in dispute. Pursuant to those efforts, the parties advise and notify the court of the following:

Items Resolved

The parties agree that:

1. Depositions are not available in the German court proceeding contemplated by Orthogen, against Edward Capla.
2. In the first stage of a Stufenklage (the German court proceeding discussed in the parties' papers), a party can seek an order from the court requiring the other party to provide documents and information.

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Issues Remaining for Resolution

The following issues have been identified by the Caplas as remaining for resolution by the court:

1. Whether or not the Court should grant the motion to quash subpoenas served on the Caplas by Orthogen?
2. Whether or not the Court should stay proceedings in this action until resolution of Orthogen's motion to dismiss in the case of *Schottenstein v. Capla, Orthogon et al.*, S.D.N.Y. Case No. 22-cv-10883-PKC?
3. Whether or not the Court should transfer this action to be heard in the U.S. District Court for the Southern District of New York?

The following issue has been identified by Orthogen as remaining for resolution by the court:

1. Whether for the reasons stated in Orthogen's papers, the Court should order the Caplas to comply with the subpoenas served on them.

Date: August 25, 2023.

Respectfully submitted,

/s/ Ilana Drescher

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